

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re:

ASHINC Corporation, *et al.*,¹

Debtors.

American Private Equity Partners II, LP, *et al.*,

Petitioners,

v.

Catherine E. Youngman, Litigation Trustee For ASHINC
Corporation.,

Respondent.

Chapter 11

Civil Action No. 22-cv-302-CFC

Bankruptcy Case No. 12-11564

Adv. Proc. No. 21-51179-CSS

**STIPULATION AND ORDER RESOLVING MOTION
TO WITHDRAW THE BANKRUPTCY REFERENCE**

This Stipulation is entered into by and between Plaintiff Catherine E. Youngman, in her capacity as the Litigation Trustee and Plan Administrator for ASHINC Corporation and related debtors (the “Trustee” or “Plaintiff”); Defendants Yucaipa American Alliance Fund I, LLC and

¹ The Debtors in these cases, along with the federal tax identification number (or Canadian business number where applicable) for each of the Debtors, are: ASHINC Corporation (f/k/a Allied Systems Holdings, Inc.) (58-0360550); AAINC Corporation (f/k/a Allied Automotive Group, Inc.) (58-2201081); AFBLLC LLC (f/k/a Allied Freight Broker LLC) (59-2876864); ASCCO (Canada) Company (f/k/a Allied Systems (Canada) Company) (90-0169283); ASLTD L.P. (f/k/a Allied Systems, Ltd. (L.P.)) (58-1710028); AXALLC LLC (f/k/a Axis Areta, LLC) (45-5215545); AXCCO Canada Company (f/k/a Axis Canada Company) (875688228); AXGINC Corporation (f/k/a Axis Group, Inc.) (58-2204628); Commercial Carriers, Inc. (38-0436930); CTSINC Corporation (f/k/a CT Services, Inc.) (38-2918187); CTLLC LLC (f/k/a Cordin Transport LLC) (38-1985795); F.J. Boutell Driveway LLC (38-0365100); GACS Incorporated (58-1944786); Logistic Systems, LLC (45-4241751); Logistic Technology, LLC (45-4242057); QAT, Inc. (59-2876863); RMX LLC (31-0961359); Transport Support LLC (38-2349563); and Terminal Services LLC (91-0847582). Debtors address for service of process is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

Yucaipa American Management, LLC (together, the “Yucaipa Defendants”); and Defendants American Airlines Master Fixed Benefit Pension Plan Trust, American Private Equity Partners II, LP, California Public Employees’ Retirement System, Carpenters Pension Trust Fund For Northern California, Collier Partners 702 LP Incorporated, Clouse S.A., acting in respect of its Compartment 11, Consolidated Retirement Fund, IAM Private Equity, LLC, ILGWU Death Benefit Fund 4, International Sif Sicav SA, Locals 302 & 612 Of The International Union Of Operating Engineers – Employers Construction Industry Retirement Trust, National Retirement Fund, New Mexico State Investment Council, New Mexico State Investment Council Land Grant Permanent Fund, New Mexico State Investment Council Severance Tax Permanent Fund, New York City Employees’ Retirement System, New York City Fire Department Pension Fund, New York City Police Pension Fund, Northeast Carpenters Pension Fund, Pacific Coast Roofers Pension Plan, Sanba II Investment Company, State Street Bank And Trust Company (As Trustee On Behalf Of American Airlines Master Fixed Benefit Pension Plan Trust), Steamship Trade Association Of Baltimore, Inc. – International Longshoremen’s Association (AFL-CIO) Pension Fund, Teachers’ Retirement System Of The City Of New York, United Food And Commercial Workers International Union Pension Plan For Employees, and Western Conference Of Teamsters Pension Trust (collectively, the “LP Defendants”);

WHEREAS, on October 6, 2021, the Trustee filed with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), in adversary proceeding number 21-51179-MFW (the “Adversary Proceeding”),² the *Litigation Trustee’s Complaint to (I) Avoid and Recover*

² References to the docket in the Adversary Proceeding shall be as “Adv. Pro. D.I. ____.”

Avoidable Transfers, and (II) for a Declaration of Liability Against Yucaipa American Alliance Fund I, LLC (the “Complaint”) [Adv. Pro. D.I. 1];

WHEREAS, the Adversary Proceeding was referred (the “Bankruptcy Reference”) to the Bankruptcy Court pursuant to this Court’s *Amended Standing Order of Reference* dated February 29, 2012;

WHEREAS, on March 4, 2022, the LP Defendants filed in the Adversary Proceeding a *Motion to Withdraw the Reference Pursuant to 28 U.S.C. § 157(d) and Federal Rule of Bankruptcy Procedure 5011* (the “Motion to Withdraw”) [Adv. Pro. D.I. 46], seeking to withdraw the Bankruptcy Reference;

WHEREAS on March 7, 2022, the Motion to Withdraw was docketed with this Court [D.I. 1];

WHEREAS on May 2, 2022, the Trustee filed her Response to the Motion to Withdraw in the District Court [D.I. 9] (the “Motion to Withdraw Opposition”);

WHEREAS on May 24, 2022, the LP Defendants filed a Reply Brief in support of their Motion to Withdraw [D.I. 16], and the Motion to Withdraw is now fully briefed before this Court;

WHEREAS, on May 31, 2022, Defendants the Board of Fire and Police Pension Commissioners of the City of Los Angeles and the Board of Administration of the Los Angeles City Employees’ Retirement System (together, the “City Pension Defendants”) filed in the Adversary Proceeding their motion to dismiss the Complaint [Adv. Pro. D.I. 73] (the “City Pension Defendants’ Motion to Dismiss”) and memorandum of law in support thereof [Adv. Pro. D.I. 74];³

³ The City Pension Defendants have not joined or objected to the Motion to Withdraw. They take no position on this Stipulation. However, to the extent the Court withdraws the Bankruptcy Reference with respect to the Adversary Proceeding in its entirety, (a) the parties to this Stipulation request that all of the Motions to Dismiss (including the City Pension Defendants’ Motion to Dismiss) be treated as set forth in paragraph 2 below and (b) the City Pension Defendants have indicated that they do not object to such treatment.

WHEREAS, on June 1, 2022, the Yucaipa Defendants filed in the Adversary Proceeding their motion to dismiss the Complaint [Adv. Pro. D.I. 76] (the “Yucaipa Defendants’ Motion to Dismiss”);

WHEREAS, on June 1, 2022, the LP Defendants filed in the Adversary Proceeding their motion to dismiss the Complaint [Adv. Pro. D.I. 78] and memorandum of law in support thereof [Adv. Pro. D.I. 79] (the “LP Defendants’ Motion to Dismiss” and together with the City Pension Defendants’ Motion to Dismiss and the Yucaipa Defendants’ Motion to Dismiss, the “Motions to Dismiss”);

WHEREAS, on June 1, 2022, the LP Defendants filed in the Adversary Proceeding their Motion to Stay Adversary Proceeding Pending the Disposition of the Motion to Withdraw the Reference [Adv. Pro. D.I. 85] and memorandum of law in support thereof [Adv. Pro. D.I. 86] (the “Motion to Stay”); and

WHEREAS, in an effort to streamline proceedings, the Trustee and LP Defendants, with consent of the Yucaipa Defendants, have agreed to stipulate, on the terms and conditions set forth herein, to withdrawal of the Bankruptcy Reference with respect to the Adversary Proceeding.

NOW, THEREFORE, it is hereby stipulated and agreed, subject to the approval of this Court, that:

1. The Bankruptcy Reference is withdrawn with respect to the Adversary Proceeding and the Adversary Proceeding shall hereafter proceed in this Court.
2. All of the Motions to Dismiss are deemed filed in this Court, and the scheduling and page limit stipulations approved by the Bankruptcy Court on June 10, 2022 [Adv. Pro. D.I. 93, 94, 95] with respect to the Motions to Dismiss shall remain in effect following withdrawal of the Bankruptcy Reference.

3. Upon this Court's approval of this Stipulation, the Motion to Stay shall be deemed withdrawn as moot.
4. Nothing in this Stipulation shall be deemed to waive or impact any rights of the parties, including but not limited to all arguments raised in the Motions to Dismiss. For the avoidance of doubt, entry into this Stipulation does not constitute consent to this Court's personal jurisdiction over any of the LP Defendants or a waiver of any challenge to this Court's subject-matter jurisdiction.
5. Nothing in this Stipulation shall be deemed to impact the Court's orders directing the Trustee and the Yucaipa Defendants to mediation in pending appeals under case numbers 22-cv-634-CFC and 22-cv-635-CFC, and staying those appeals pending mediation.
6. Other than the matters addressed in this Stipulation, the parties each reserve all rights and defenses in this Adversary Proceeding and all other related actions.
7. Nothing herein shall prejudice the parties' rights to agree to and/or seek approval of further stipulations, or to agree to and/or seek further relief from this Court or the Bankruptcy Court, as applicable, regarding the terms agreed upon herein.
8. By entering this Order, this Court withdraws the Bankruptcy Reference with respect to the Adversary Proceeding for all purposes.

Dated: July 14, 2022

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IT IS SO ORDERED, this ____ day of _____, 2022.

The Honorable Colm F. Connolly